IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9512 OF 2003

Chandrakant Laxman Koli & anr. ..Petitioners.

Vs.

State of Maharashtra & Ors. ..Respondents.

...

Mr. K.N. Kandekar for the Petitioners.

Mr. C.R. Sonawane, Assistant Government Pleader for Respondent Nos.1 to 6.

...

CORAM : **KSHITIJ R. VYAS, C.J. &**
DR.D.Y.CHANDRACHUD, J.

4th April, 2006.

P.C.(Per DR. D.Y. CHANDRACHUD, J.):

1. Rule, returnable forthwith. The learned AGP appearing for Respondent Nos.1 to 6 waives service. By consent taken up for hearing and final disposal.

2. The Petitioners claim to belong to the Mahadeo Koli community which is notified as a Scheduled Tribe under the Presidential notification issued under Article 342 of the

Constitution. The First Petitioner joined services of the Fifth Respondent, the Controller of Rationing, on 18th July, 1976. The Second Petitioner is the son of the First Petitioner and he has been admitted to the MBBS Degree course in a quota reserved for the Scheduled Tribes.

3. The caste certificate issued to the First Petitioner was initially referred for verification to the Scrutiny Committee which rejected the claim on 12th August, 1994. In Writ Petition 1447 of 1995 challenging the order of the Scrutiny Committee, it has been stated that the proceedings were remanded back to the Scrutiny Committee for a fresh decision. Accordingly it has been stated that the First Petitioner approached the Scrutiny Committee with 36 documents in support of the caste claim. The validity certificate was stated to have been refused principally on four grounds viz. (i) the caste entries in the service record of the father and the school record of the elder brother 'look different'; (ii) people residing in Turumbadi belong to the Koli community, an OBC; (iii) the caste certificates were always subject to scrutiny by the Committee and (iv) certain instructions had been given by the Director of Tribal Welfare, Nashik. The rejection of his caste claim was challenged

by the First Petitioner by filing Writ Petition 858 of 1997.

4. In so far as the Second Petitioner is concerned, it appears that he had filed Writ Petition 4599 of 1998 challenging the refusal of a caste certificate to him. By an order dated 31st August, 1998 this Court directed the competent authority to issue a caste certificate and accordingly a caste certificate was issued to him. The Scrutiny Committee however, declined to issue a validity certificate in favour of the Second Petitioner which led to the institution of a Petition, Writ Petition 7190 of 1999.

5. Writ Petition 858 of 1997 and Writ Petition 7190 of 1999 were disposed of by a judgment and order of this Court dated 21st December, 2001. The Petitions came to be disposed of by directing the Scrutiny Committee to re-examine the claim of the Petitioners upon remand in the light of the observations contained in the judgment. On 30th April, 2002, the Scrutiny Committee has once again rejected the claim of the Petitioners to belong to the Mahadeo Koli community. That order has been impugned in these proceedings under Article 226 of the Constitution.

6. The order passed by the Scrutiny Committee adverts to the primary school admission register maintained by the Head Master of Raigad Z. P. School, Turumbadi pertaining to the “real” uncles of the Petitioners, the names and details of whom are as follows :

Sr. No.	*Reg.No.*	*Name of the Student*	*Caste/ Sub Caste*	*Date of Birth*	*Date of Admission*	*Relation to the candidate 1.*
1	298/03	Janardhan Rama Koli	Hindu Mahadeo Koli	01/06/66	29/7/72	Real uncle
2	10.3	Ramdas Rama Koli	Hindu Mahadeo Koli	.....	.....	Real uncle
3	144/3	Vasant Rama Koli	Hindu Mahadeo Koli	01/06/61	05/08/68	Real uncle

The Committee has observed that the word 'Mahadeo' appears in a different handwriting and in a different ink.

7. In order to consider the correctness of the aforesaid finding, the Learned AGP was directed to produce the original school admission register since it was contended on behalf of the Petitioners that the finding was erroneous. Upon perusal of the original register, which was produced by the AGP, it appears that

the entries relating to Janardan Rama Koli and Ramdas Rama Koli both show the two persons as belonging to the Hindu Mahadeo Koli tribe. In the case of the third person viz. Vasant Rama Koli it does appear from the register that the word 'Mahadeo Koli' has been substituted subsequently in the place of 'Sonkoli'. However, the Committee seems to have proceeded on the basis that in all three cases the word 'Mahadeo' had been added in a different handwriting in a different ink.

8. The Committee has also proceeded to analyze the case of one Kamlya Padmya Bendkoli, who is stated to be the “cousin grandfather” of the Petitioner. The Committee has recorded the objection of the Petitioners that the aforesaid person was in fact not related to the Petitioners. Similarly, it has been submitted that several other persons whose record was considered by the Committee, including one Changya Laxman Ramji Bendkoli, are in fact not related to the Petitioners.

9. The Committee noted that the Petitioner has submitted a service certificate issued by the Personnel Officer, Naval Dockyard pertaining to his grandfather, Laxman Ramaji Koli, where the caste

was mentioned as 'Mahadeo Koli'. The date of appointment was 2nd January 1951 and the date of retirement was 30th November, 1986. The Committee observed that it was not understood as to when the word 'Mahadeo Koli' came to be mentioned. The Committee, however, reiterated that the caste of the Petitioner's 'cousin paternal grandfather' is recorded as Sonkoli in the primary school record and the caste of his cousin and real uncles is recorded as Koli in the birth record.

10. In this state of the record, we are of the view that a matter deserves to be considered afresh by the Committee for several reasons. The person whom the committee calls as the “cousin grandfather” of the Petitioner is according to the Petitioner not related to him. The person whom the committee proceeded to record as the real uncle of the Petitioner is according to the Petitioner again not related to him. The Committee held that in the case of three persons, each of whom are called “real” uncles of the Petitioner, the entry of Mahadeo Koli appears to be interpolated by adding the word 'Mahadeo' subsequently. As we have already noted in the case of two of those persons the original entry does appear to be that of Mahadeo Koli. In these circumstances, we are

of the view that a careful consideration of the entire matter is required to be carried out by the Committee afresh. At the same time we have noted that the entries relating to the two paternal uncles are of a comparatively recent origin, after the date of the Presidential notification. The Committee would be justified in placing greater reliance on older entries particularly those prior to 1950, though it has to consider the entire record.

11. We accordingly dispose of this Petition with the following directions :

i) The impugned order of the Scrutiny Committee dated 30h April, 2002 is quashed and set aside in order to facilitate a fresh determination by the Scrutiny Committee and without the expression of any opinion by this Court on the merits of the claim;

ii) On remand, the Petitioners shall appear before the Scrutiny Committee on 2nd May, 2006. It would be open to the Petitioners to file a fresh representation before the Scrutiny Committee together with such documentary material as they seek to rely upon. The Petitioners shall, in particular, provide a correct

genealogy of the family and such further material and information, as may be required by the Committee to arrive at a correct determination;

iii) It would be open to the Committee to cause a fresh home enquiry to be conducted by the Vigilance cell;

iv) The Committee shall endeavour to dispose of the proceedings on remand within a period of six months from today; and

v) No equities shall enure to the benefit of the Petitioners in the event that the claim is rejected.

The Petition is accordingly disposed of. In the circumstances of the case, there shall be no order as to costs.

CHIEF JUSTICE

(DR. D.Y. CHANDRACHUD, J.)